IN THE HIGH COURT OF JUDICATURE AT JABALPUR

WRIT PETITION NO.4088 OF 2000

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

PETITIONER: Vishwas Arvind Deshmukh
S/o late Shri Arvind Shyamrao Deshmukh, aged 30 years, Junior Engineer, M.P.Electricity Board, Raipur, Resident of N-3, Daulat Estate Dagania, Raipur (M.P.)

VERSUS

RESPONDENTS:

1. Madhya Pradesh Electricity Board,
Through : Secretary,
Shakti Bhawan, Rampur,
Jabalpur.

2. The Chairman,
M.P.Electricity Board,
Shakti Bhawan, Rampur,
Jabalpur.

3. Executive Director (HRD)
M.P.Electricity Board,
Shakti Bhawan, Rampur,
Jabalpur.

4. Chief Engineer (JR)
M.P.Electricity Board,
Jagdalpur, Distt. Bastar (M.P.)

1. PARTICULARS OF THE PETITIONER:

As mentioned in the cause title.

2. PARTICULARS OF THE RESPONDENTS:

As mentioned in the cause title.

3. PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS MADE :

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Satish K. Agnihotri, J.**

WRIT PETITION NO.4088 OF 2000

Vishwas Arvind Deshmukh

Versus

M.P. Electricity Board & others

Post for order on 5th December, 2005

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Satish K. Agnihotri, J.**

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Present: Shri Awadh Tripathi, counsel for the petitioner.

Shri P.S. Koshy, counsel for the respondents.

ORDER

(Passed on 5th of December, 2005)

The following Order of the Court was passed by **Satish K. Agnihotri, J : -**

The petitioner was appointed as Diploma Trainee/ Technical Assistant on 27.3.91. After successfully completion of training, the petitioner was posted as Junior Engineer on 27.12.1992. Before appointment as Diploma Trainee/Technical Assistant, the petitioner passed Part A examination of A.I.M.E. (Electrical) on 4.10.89. The petitioner further passed 6 papers, out of 8 papers of Part B examination on 11.3.1991 before appointment as Diploma Trainee/Technical Assistant on 27.3.91. The petitioner passed remaining 2 papers of Part B examination of A.I.M.E. (Electrical) on 25.11.91. Accordingly, the petitioner was granted A.I.M.E. (Electrical) degree in the month of April, 1992.

2. The petitioner informed to the respondents by letter dated 6.8.92 that the petitioner had obtained A.I.M.E. (Electrical) (Annexure P-5). The Circulars dated 26.8.88 (Annexure R-1), dated 7.6.89 (Annexure R-2), dated 15.11.90 (Annexure P-6) and dated 1.3.93 (Annexure R-4) issued by the Respondents/Board, provided that diploma holders, who had obtained the degree in engineering/A.I.M.E. with at least 50% marks and have completed 4 years of service as Junior Engineer would be considered for promotion to the post of Graduate-Trainee (Assistant Engineer-Trainee). The respondents/Board considered the similarly situated employees having obtained degree/A.I.M.E., while in service with 50% marks for promotion to the post of Assistant Engineer (Trainee) and accordingly promoted 25 persons on 30.11.99. According to the petitioner, the petitioner was not considered and by letter dated 21.12.99 (Annexure P-10), a representation of the petitioner was rejected without assigning reasons.

3. Being aggrieved, the petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ/direction in the nature of mandamus against the respondents to accord promotion to the petitioner on the post of Assistant Engineer (Trainee) from 30.11.99, when other similarly situated 25 employees were promoted.

4. Shri Awadh Tripathi, learned counsel appearing for the petitioner submitted that the petitioner has been discriminated by not considering him for promotion to the post of Assistant Engineer (Trainee) in accordance with the circulars dated 26.8.88, 7.6.89, 15.11.90 and 1.3.93 (Supra). The petitioner had obtained A.I.M.E. degree in the month of April, 1992 with 50% marks as such the petitioner was entitled to be considered for promotion to the post of Assistant Engineer (Trainee). Learned counsel

relied on the decision of the High Court of Madhya Pradesh at Gwalior in Ajit Kumar Singh Vs. M.P. Electricity Board and others (2003(2) M.P.L.J. 301), wherein the High Court, while considering scope of circulars dated 27.6.89, 7.6.89 and 1.3.93 observed that the classification introduced in the circulars that diploma holder Junior Engineers, who had obtained degree/A.I.M.E., while in service, would be considered for promotion to the post of Assistant Engineer (Trainee) and other Junior Engineers already holding degree would be treated differently was violative of Article 14 and 16 of the Constitution of India. It was further observed that incentive to diploma holders to acquire higher qualification cannot be a ground for out of turn promotion to one set of employees as the same adversely affect the carrier and other prospect of other set of similarly situated category of engineers, being discriminatory and arbitrary.

5. Shri P.S. Koshy, learned counsel appearing for the respondents on the other hand, submitted that the petitioner had obtained A.I.M.E. degree before entering into the service as such the petitioner was not entitled to benefit under the above stated circulars. Learned counsel further submitted that the promotion to the post of Assistant Engineers (Trainee) on acquiring degree /A.I.M.E., while in services, are governed by the circulars and the graduate junior engineers are not governed by the said circulars.

6. After having heard learned counsel for the parties and perusing the records appended to the petition and return, it is evident that the respondents are factually incorrect in stating that the petitioner had acquired A.I.M.E. degree before joining the service as Junior Engineer. Admittedly the final degree of A.I.M.E. was acquired by the petitioner before joining service of Diploma Trainee/Technical Assistant on 27.3.91. The petitioner had passed Part A examination before joining the service on

4.10.89 and 6 papers, out of 8 papers of Part B examination on 11.3.91. A.I.M.E. degree could not have been awarded on passing of 6 papers only out of 8 papers before the petitioner joined the service. The petitioner had passed all the papers only after joining the service and as such it could not be held that the petitioner had obtained A.I.M.E. degree before 27.3.91, when the petitioner was appointed as Diploma Trainee/Electrical Assistance for the post of Junior Engineer. In the present case, the petitioner had obtained A.I.M.E. degree with 50% marks, while he was in service. Thus, the petitioner was entitled to be considered for promotion to the post of Assistant Engineer (Trainee) along with other persons before 30.11.99 for promoting similarly qualified 25 persons as Assistant Engineer (Trainee) by order dated 30.11.99 (Annexure P-7).

7. Even the issue that Junior Engineers, who had obtained degree before joining the services, be treated differently other then the diploma holders, who had obtained degree/A.I.M.E., while in service, has been considered in Ajit Kumar Singh's case (Supra) and it was held that degree holder Junior Engineers be treated at par with diploma holders Junior Engineers, who had obtained degree/A.I.M.E., while in service for consideration for promotion to the post of Assistant Engineer (Trainee). It is trite that the employees similarly situated cannot be discriminated in terms of Article 16 of the Constitution. Employees having the same qualification must be considered similarly for promotion to the higher post.

8. For the above stated reasons, the petition is allowed. The respondents/Board are directed to consider the case of the petitioner for promotion to the post of Assistant Engineer (Trainee), in accordance with law with effect from the date when other similarly situated 25 persons were

promoted as Assistant Engineer (Trainee) vide order dated 30.11.99 (Annexure P-7) within a period of three months. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge